LFC Requester:	Ismael Torres

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: *January 29, 2026* *Check all that apply:*
Bill Number: *SB170* Original *x*_ Correction __
Amendment ___ Substitute ___

Sponsor: Sen. Berghmans
Short Title: Child Care Facility Donation Tax Credit

Agency Name and Code Number: State Ethics Commission 410
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 170 creates a new section of the Income Tax Act NMSA 1978 §§ 7-2-1 to -41 (1978, as amended through 2025). The first new section creates a Child Care Facility Donation Income Tax Credit which allows an individual to be eligible to receive a tax credit up to $500,000, per taxpayer, for a monetary donation made to a qualifying child care facility or program for children 12 years or younger that meets the minimum enrollment requirements to receive subsidies from the state and is certified by the early childhood education and care department. The taxpayer must apply for certification of eligibility for the credit from the early childhood education and care department. The total aggregate amount of child care facility donation income tax credits that may be certified in a calendar year is not to exceed ten million dollars. Applications received after this limit has been met will not be approved. The portion of the credit that exceeds a taxpayer’s income tax liability in the taxable year that the credit is claimed will be refunded to the taxpayer.

Additionally, SB 170 creates a new section of the Corporate Income and Franchise Tax Act NMSA 1978 §§ 7-2A-1 to -31 (1978, as amended through 2025), Child Care Facility Donation Corporate Income Tax Credit, and is analogous to the section created in the Income Tax Act except that it applies to corporate taxpayers instead of individual taxpayers. A tax credit up to $500,000, per taxpayer, for a monetary donation made to a qualifying child care facility or program for children 12 years or younger that meets the minimum enrollment requirements to receive subsidies from the state and is certified by the early childhood education and care department. The taxpayer must apply for certification of eligibility for the credit from the early childhood education and care department. The total aggregate amount of child care facility donation income tax credits that may be certified in a calendar year is not to exceed ten million dollars. Applications received after this limit has been met will not be approved. The portion of the credit that exceeds a taxpayer’s income tax liability in the taxable year that the credit is claimed will be refunded to the taxpayer.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Because the tax credits are refundable, they trigger scrutiny under the Anti-Donation Clause, Article IX, Section 14 of the New Mexico Constitution. How the Anti-Donation Clause applies to a tax credit depends on the credit’s specific attributes, including refundability. Both the Child Care

Facility Donation Income Tax Credit and the Child Care Facility Donation Corporate Tax Credit are refundable but not transferable.

The Anti-Donation Clause constrains the Legislature's exercise of the tax power, and it applies to prevent the enactment of certain kinds of tax credits. How the Anti-Donation Clause applies to a tax credit, however, depends on the credit's specific attributes. Tax credits may be *non-refundable*, such that where a credit in excess of a taxpayer's *ex ante* tax liability is not refunded to the taxpayer, or *refundable*, where it is. Nevertheless, the New Mexico Supreme Court has held that even a non-refundable tax credit violates the Anti-Donation Clause when it is a targeted subsidy to a particular, discrete industry. *Chronis v. State ex rel. Rodriguez*, 1983-NMSC-081, ¶ 30 (holding a non-refundable tax credit was "an unconstitutional subsidy to the liquor industry" in violation of the Anti-Donation Clause).

If a refundable tax credit is sufficiently large, the calculation might produce a negative tax liability—*i.e.*, an amount that the State will pay (or "refund") to the person. Courts have held that where the State receives value in exchange for transferring public money, the transfer is not a "donation" implicating the Anti-Donation Clause.[1] This analysis sounds in contract law, where the receipt of consideration separates binding contracts from non-binding, donative promises. In limiting the reach of the term "donation," the courts have focused on whether the public-entity donor (e.g., the State, the county, the municipality) receives some commitment or performance in exchange for the transfer. The focus is *not* whether the transfer is generally in the public interest, and the Courts have never held that simply because a transfer of public funds is in the public interest, it is therefore exempt from the Anti-Donation Clause. To the contrary, the New Mexico Supreme Court has explicitly stated "[t]he constitution makes no distinction as between 'donations', whether they be for a good cause or a questionable one. It prohibits them all." *State ex rel. Sena v. Trujillo*, 1942-NMSC-044, ¶ 22. In other words, a transfer is not exempt from the Anti-Donation Clause simply because the transfer does (or is said to) promote the public interest or welfare. The question of constitutional interpretation is whether the transfer is a "donation," not whether it is in the public interest. And simply because a transfer is anticipated to create downstream benefits that redound to the public (as in the case of subsidies for child care facilities), the anticipated benefit does not convert the transfer from a donation into a bargained-for exchange. However, if a tax credit is sufficiently conditional, such that the taxpayer has to satisfy a set of conditions that the State demands, then the credit might be more analogous to a unilateral contract that the State offers as opposed to an unconditional subsidy.

Finally, any Anti-Donation Clause analysis must also consider the exceptions provided for in

[1] *See Pierce v. State*, 1996-NMSC-001, ¶ 29 n.12 (rejecting challenge to statutorily conferred pension benefits because pension benefits are not a gratuity but value exchanged for work received by the public employer); *City of Gallup v. N.M. State Park & Recreation Comm'n*, 1974-NMSC-084, ¶ 9 (rejecting an anti-donation claim because, under agreement, state would receive title to 640 acres in Red Rock State Park, $1.5M for construction, and maintenance and operation of the park for the life of lease contract with Gallup); *White v. Board of Educ. of Silver City*, 1938-NMSC-009, ¶ 31 (rejecting challenge because board of education "will get value received for every dollar put into the enterprise" of a bond issue to build a school to join state and local schools); *Treloar v. County of Chaves*, 2001-NMCA-074, ¶ 32 (rejecting challenge to severance benefits because "severance pay is deemed to be in the nature of wages that have been earned"); *State ex rel. Office of State Eng'r, et al. v. Lewis*, *et al.*, 2007-NMCA-008, ¶ 51 (rejecting challenge to Pecos River rights settlement because, in exchange for funds, State received land and water rights, as well as settlement of claims in suit); *cf. City of Raton v. Ark. River Power Auth.*, 600 F. Supp. 2d 1130, 1161 (D.N.M. 2008) (Browning, J.) ("The Court does not believe that the Anti-Donation Clause is implicated when there is true consideration—money exchanged for real product. . . . The Court does not believe it should evaluate whether the agreement was a good or bad deal under the Anti-Donation Clause, but merely check for adequate consideration.").

Subsections A through H. Those enumerated exceptions provide the categories of those subsidies that the people of New Mexico have deemed as sufficiently in the public's interest to remove them from the Clause's anti-subsidy scope. However, it is not clear that any of those exceptions would apply in this instance.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS